Supreme Court, U. S.
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-4391

THE PEOPLE OF THE TERRITORY OF GUAM,
Petitioners,

vs.

EDMUND J. OLSEN,
Respondent.

PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

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In the Supreme Court
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OCTOBER TERM, 1976

No.

THE PEOPLE OF THE TERRITORY OF GUAM,
Petitioners,

vs.

EDMUND J. OLSEN,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit

Petitioners, the People of the Territory of Guam, respectfully pray this Court issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit (hereafter Ninth Circuit), entered in cause number 76-1557 on August 31, 1976 which reversed the judgment of the District Court of Guam (hereafter District Court).

OPINION BELOW

The opinion of the Ninth Circuit issued on August 10, 1976 (Mandate and Judgment entered on August

31, 1976) has not been officially reported. A copy of said opinion has been appended hereto at page A-1. The Judgment of conviction against Respondent was entered in the Superior Court of Guam on the 28th day of October, 1975. Notice of Appeal was filed with the District Court of Guam, Appellate Division, on the 28th day of October, 1975. The Order of the District Court of Guam, neither officially or unofficially published, dismissing the appeal for lack of jurisdiction was entered on the 9th day of March 1976. Said Order of the District Court of Guam is appended hereto at page A-5.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1) and Rule 19(1)(b) of the Rules of this Court, to review an opinion of the Ninth Circuit which has rendered a decision which has decided an important territorial question in a manner to conflict with territorial law by declaring said law contrary to the Organic Act of Guam (48 U.S.C. 1421, et seq.) and in a manner which conflicts with a previous ruling of this Court. (P.L. (Guam) 12-85, appended at A-8.

The judgment of the Ninth Circuit was entered on August 31, 1976. This Petition is timely in that it is filed prior to the expiration of the thirty (30) day period allowed by Rule 22(2) of this Court.

QUESTION PRESENTED FOR REVIEW

1. Whether the Organic Act of Guam, Section 22 (48 U.S.C. §1424) permits the Territory of Guam sufficient powers of self-government so as to allow its Legislature to create an appellate court separate from the District Court of Guam to which all appeals from the Superior Court, created also by the Legislature of Guam, are to be directed. (P.L. 12-85 (Guam))

ORGANIC ACT (FEDERAL LAW) PROVISIONS INVOLVED

Federal law interpreted by the Ninth Circuit contrary to the laws of Guam is Section 22 (48 U.S.C. §1424) which states, in pertinent part:

> "Section 22. (a) There is hereby created a court of record to be designated the "District Court of Guam", and the judicial authority of Guam shall be vested in the District Court of Guam and in such court or courts as may have been or may hereafter be established by the laws of Guam. The District Court of Guam shall have the jurisdiction of a district court of the United States in all causes arising under the Constitution, treaties, and laws of the United States, regardless of the sum or value of the matter in controversy, shall have original jurisdiction in all other causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it, and shall have such appellate jurisdiction as the legislature may determine. The jurisdiction of and the procedure in the courts of Guam other than the Dis-

trict Court of Guam shall be prescribed by the laws of Guam.

"Appeals to the District Court of Guam shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The judge appointed for the court by the President shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges assigned to the court from time to time pursuant to section 24(a) of this Act. The concurrence of two judges shall be necessary to any decision by the District Court of Guam on the merits of an appeal but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute in accordance with the applicable law or rules or procedure."

STATEMENT OF THE CASE

This Petition arises from a reversal of and remand to the District Court of Guam of its Order of Dismissal in the case of *The People of the Territory of Guam v. Edmund J. Olsen,* Criminal Case No. 84F-75 whereby the Ninth Circuit determined that the legislature of Guam lacked the power to create a Supreme Court of Guam, to which court the Respondent, Olsen, had also appealed. In such a ruling the Ninth

Circuit, while sitting *en banc* and by a vote of seven judges to four, overruled a previous ruling of a panel of that court in the case of *Agana Bay Development Co. (Hong Kong) Ltd. v. Supreme Court of Guam,* No. 75-1059 (529 F.2d 952) which had ruled upon the identical issue, but in a manner upholding the laws of Guam. No issue pertaining to the respondent's criminal conviction is raised either by the appeal to the Ninth Circuit or by this Petition. Jurisdiction of the 9th Circuit is by 28 U.S.C. 1291.

Facts Material to the Consideration of the Question Presented

A concise history of the courts of Guam under the Organic Act is contained in the Opinion of the Ninth Circuit in *Agana, Bay Dev. Co. (Hong Kong) Ltd. v. Supreme Court of Guam,* 529 F.2d 952, 955.

Following the decision of the Ninth Circuit in *Agana Bay,* the real parties in interest settled the merits of the case and no Petition to this Court ensued. During the period of time *Agana Bay* was on appeal, the Respondent herein, Olsen, was convicted of criminal charges in the Superior Court of Guam. Due to the uncertainty of the outcome in *Agana Bay,* an appeal from his conviction was filed in both the Supreme Court of Guam and in the Appellate Division of the District Court of Guam. Upon the reversal of the District Court of Guam in the *Agana Bay* case, the District Court dismissed the appeal upon the authority of *Agana Bay.*

An appeal was timely taken to the Ninth Circuit by Respondent. Before the Ninth Circuit could hear

the matter, a Petition for Writ of Certiorari was entered by Respondent, which Petition was denied. Following denial, the Ninth Circuit ordered a hearing *en banc without further briefs or arguments.* Initially, both parties had relied upon the majority and dissent in the case of *Agana Bay.* The Ninth Circuit, *en banc,* reversed its holding in *Agana Bay,* and determined that Guam does not possess the power to create an Appellate Court, but can only limit or enlarge the appellate powers of the District Court.

From that *en banc* decision, this Petition comes.

REASONS FOR ALLOWANCE OF THE WRIT

I

THE LANGUAGE OF THE ORGANIC ACT AND ITS HISTORY GIVES THE LEGISLATURE OF GUAM THE POWER TO PLACE APPELLATE POWERS OF GUAM IN THE DISTRICT COURT OR IN AN APPELLATE COURT CREATED BY THE LEGISLATURE

The Organic Act of Guam, unlike the Organic Acts of the Virgin Islands or (formerly) Puerto Rico, Hawaii and Alaska, creates both a federal *District Court of Guam* and "such court or courts" established by the laws of Guam and gives to both types of courts the full "judicial authority of Guam." In addition, the District Court of Guam is given exclusive federal jurisdiction and exclusive jurisdiction over matters involving the territorial income tax. (48 U.S.C. §1424 [para. 1] and §1421i(h)(5)). Therefore, any locally created court, to the extent of the jurisdiction given

it by the territorial legislature, partakes equally of the same judicial authority of Guam as does the District Court of Guam.

> The local jurisdiction of the District Court is:
>
> "in all other [non-federal] causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it, *and shall have such appellate jurisdiction as the legislature may determine.*" [emphasis mine] 48 U.S.C. §1424, para. 1

Pursuant to this authority, the First Guam Legislature created the Appellate Division of the District Court by (Guam) Public Law 77.

In 1958, Congress passed P.L. 85-444, §21 (72 Stat. 179, codified as 48 U.S.C. §1424(a) as amended) which had the purpose, as stated by the Ninth Circuit, as:

> "Thus, instead of purporting to create a new appellate body, Congress . . . was only formalizing the procedural means by which the District Court should exercise its theretofore existing appellate jurisdiction, jurisdiction which antedated the amendment to 28 U.S.C. §1291. 'Appeals to the District Court of Guam shall be heard and determined by an appellate division of the court consisting of three judges, . . .' *Corn v. Guam Coral Co.,* 318 F.2d 622 (1963).

This amended section did not delete or otherwise alter the first paragraph which provided for the basic jurisdiction of the courts of Guam, which remains intact to this day. As the Ninth Circuit previously stated, all the 1958 amendment did was to provide a

procedure for the District Court, a task which was beyond the powers of the local legislature.

Therefore, the Ninth Circuit erred when it determined that Guam did not possess the power to create its own Supreme Court, since nowhere does the Organic Act of Guam invest *exclusive* jurisdiction over appellate matters with the District Court of Guam, but only provides the means by which such jurisdiction it may have may be procedurally exercised.

II

THE COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, BY USING COMPARABLE LANGUAGE TO THE ORGANIC ACT OF GUAM, HAS SPECIFICALLY PERMITTED THE COMMONWEALTH TO CREATE ITS OWN APPELLATE STRUCTURE OR USE THE APPELLATE DIVISION OF THE DISTRICT COURT

Article IV of the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" (Public Law 94-241, 90 Stat. 263), creates a District Court of the Northern Mariana Islands having equivalent federal jurisdiction of the District Court of Guam, and local jurisdiction "over which is not vested by the Constitution or laws of the Northern Mariana Islands in a court or courts of the Northern Mariana Islands." (90 Stat. 263, 266) Further, this District Court "will have such appellate jurisdiction as the Constitution or laws of the Northern Mariana Islands may provide." (90 Stat. 263, 267)

An Official History of the "Covenant", signed by the parties who negotiated it, but not made a part of the Public Law above referred, states, with reference to the appellate powers of the District Court of the Northern Mariana Islands:

> "Subsection 402(c). It is the intention of the parties with respect to this Subsection that the Legislature of the Northern Mariana Islands be under no obligation to grant any appellate jurisdiction to the District Court for the Northern Mariana Islands. The Legislature may choose at any time and from time to time to establish appellate courts of the Northern Mariana Islands and to eliminate or reinstate the appellate jurisdiction of the District Court." (*History,* at [page 3]; Appended hereto at page A-7).

Of course, Congress, through the Covenant also provided for appeals to an Article III court from the local appellate court, if and when created. This has not been done on Guam, but no hindrance exists for such legislation, and in fact, such has been introduced (H.R. 4580, Mar. 1975).

While the Covenant did not become law until March 24, 1976, it shows that the Ninth Circuit did commit error when it found that the intent of Congress using the language of the Organic Act was to prohibit the Legislature of Guam from creating its own appellate court, and also divesting the District Court of its jurisdiction. It cannot be said that Congress, and the signers of the Covenant intended the same language to be used in one instance to permit the formation of a locally-created Supreme Court (of

the Northern Marianas) and in another instance (Guam) prohibit the same act. Thus, the Ninth Circuit's decision required review by this Court to settle the intent of this language.

III

THIS COURT HAS PREVIOUSLY HELD THAT, IN SIMILAR CIRCUMSTANCES, LANGUAGE SIMILAR TO THAT OF THE ORGANIC ACT OF GUAM DOES NOT REQUIRE A FINDING OF EXCLUSIVE JURISDICTION

In the case of *The American Ocean Ins. Co.'s v. 356 Bales of Cotton,* 1 Peters 511, 7 L.Ed. 242, this Court upheld the power of the Florida Territorial Legislature to bestow Admiralty jurisdiction on a territorial court in Key West, Florida despite the fact that the Organic Act of Florida gave to the Congressionally-created Superior Court "the same jurisdiction" as was given to the court of Kentucky District, which latter court did have exclusive Admiralty jurisdiction. (Supra, 7 L.Ed. at 255.)

Florida's Organic act provided even less latitude in creating local courts than does the Organic Act of Guam since the Florida Legislature could create *only* "inferior" courts (to the Superior Courts). Chief Justice Marshall, in delivering the Opinion, found that the grant of "judicial power of the territory" was made equally to the Superior Courts and to the Inferior courts, and jurisdiction was concurrent, except where specifically made exclusive (7 L.Ed., at 256). The Chief Justice also points out that, even though Admiralty jurisdiction is an exclusive federal function in a state, Congress had full power under

Article IV of the Constitution to empower a Territory to create its own courts with any jurisdiction allowed it by Congress.

The same situation exists for Guam, except that the Organic Act of Guam does not limit the legislatively-created courts to "inferior" courts, and provides that the District Court of Guam has exclusive jurisdiction only in matters which "arise under the Constitution, treaties, and laws of the United States, . . ." (48 U.S.C. 1424), or which concern the Territorial Income Tax (48 U.S.C. 1421i(h)(5)). Nowhere is the appellate jurisdiction made exclusive in the District Court of Guam, Appellate Division. Rather, what appellate jurisdiction as does exist in that court is to be "as the legislature [of Guam] may determine" (48 U.S.C. 1424).

As shown in previous argument, the second paragraph of 48 U.S.C. §1424 was added to provide for procedure to govern appeals to the Appellate Division of the District Court, since the Legislature of Guam cannot prescribe the procedure for the District Court, even though it is permitted to determine its appellate jurisdiction.

As in the Florida Territory, the second paragraph of 48 U.S.C. 1424 does not give exclusive jurisdiction to the District Court over appellate matters. Not only does it not specifically grant jurisdiction, as that is done in the first paragraph of the Section, it does not state that the only appeals available on Guam are in the District Court or are to be governed by its procedure. Rather, that paragraph only prescribes the

procedure in the District Court, a matter which the laws of Guam cannot provide. And, the procedure is to be used with *only* those appeals which are heard in the District Court.

Therefore, the Ninth Circuit erred in that it interpreted the second paragraph as giving exclusive jurisdiction over all appeals in Guam to the District Court.

CONCLUSION

Therefore, because the decision of the Ninth Circuit is in error, and because this issue is of great significance in determining the degree of self-government permitted to the Territory of Guam, and because a previous ruling of this Court granted powers similar to those sought by Guam to a Territory of the United States under laws worded in a similar fashion to the Organic Act of Guam, a writ of ceritorari should be issued to review the judgment and order of the Ninth Circuit.

Respectfully submitted,

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September 22, 1976

(Appendix Follows)

APPENDIX

Appendix

United States Court of Appeals
for the Ninth Circuit

No. 76-1557

The People of the Territory of Guam,
Plaintiff-Appellee,
vs.
Edmund J. Olsen,
Defendant-Appellant.

(August 10, 1976)

Appeal for the United States District Court
for the District of Guam

OPINION

Before: BROWNING, DUNIWAY, ELY, HUFSTEDLER, WRIGHT, TRASK, CHOY, GOODWIN, WALLACE, SNEED, and KENNEDY, Circuit Judges.

PER CURIAM:

In Agana Bay Development Co., v. Supreme Court of Guam, 529 F.2d 952 (9th Cir. 1976) a divided panel of this court held that the Organic Act of Guam, 64 Stat. 384 (1950), authorized the territory to enact its Court Reorganization Act, by which it

transferred the appellate jurisdiction of the district court to the newly created Supreme Court of Guam. The record in that case shows that it was settled after our opinion issued; no petition for certiorari was filed with the Supreme Court of the United States.

Appellant in the present case was convicted of criminal charges in the Superior Court of Guam. He appealed to the United States District Court for the Territory of Guam [sic] and that court dismissed the appeal on the authority of *Agana Bay*. Appellant then petitioned for a writ of certiorari to the Supreme Court of the United States before the case was heard in our court; the petition was denied. We ordered the case submitted to the court en banc so that the question presented in *Agana Bay* could be resolved by the full court.

We now hold that the provisions of Guam's Court Reorganization Act transferring the appellate jurisdiction of the district court to a territorial court are not authorized by the Organic Act. We therefore overrule the panel's opinion in *Agana Bay Development Co. v. Supreme Court of Guam*. In so holding we adopt the analysis of the dissenting opinion in *Agana Bay*. We find particularly applicable to this case that portion of the *Agana Bay* dissent which points out that litigation in the territorial court may involve substantial federal questions which cannot be reviewed by the United States Supreme Court or by any other article III court under existing statutes. See 529 F.2d at 960-61, n.3.

We recognize that Guam's Court Reorganization Act was drawn to give expression to a strong desire by the territorial legislature for a greater degree of autonomy and self-government for Guam, and our ruling should not be construed as critical of that objective. We hold only that the appellate jurisdiction of the district court may not be transferred without congressional authorization and pursuant to such provisions and safeguards as Congress may provide.

The ruling of the district court declining appellate review in this case is reversed and the cause remanded.

GOODWIN, Circuit Judge, with whom Judges Duniway, Trask and Wallace join, dissenting:

I dissent, for the reasons set out by Judge Carter in Agana Bay Development Co. v. Supreme Court of Guam, 529 F.2d 952 (9th Cir. 1976).

MEMORANDUM OF CIRCUIT JUDGE CHAMBERS:

On June 9, 1976, I participated in the vote of the active judges of the court to take this case en banc.

On June 13, 1976, I received notice that the Chief Justice of the United States was appointing me as chairman of a newly created committee of the Judicial Conference of the United States on the Pacific Territories.

On July 8, the Chief Justice completed the committee by adding thereto our Circuit Judges Ely and Choy and Judge Paul D. Shriver (retired United States district judge for the Territory of Guam) of

Denver, Colorado, and Charles H. Habernigg (former Attorney General of American Samoa), of Portland, Oregon.

In the interim between my appointment and the appointment of Judges Ely and Choy to the committee, the latter two cast their votes for the view expressed by Judge Kennedy. Judge Ely voted on June 24 and Judge Choy on June 28. I did not vote because it seemed that I should not wear a judicial hat and a semi-legislative or policy hat at the same time, although I do not consider myself disqualified.

On the other hand, it seems proper that the votes of Judges Ely and Choy should be counted because their official positions on the committee were created after they had voted.

In the District Court of Guam
Appellate Division

Undocketed

The People of the Territory of Guam,
Plaintiff-Appellee,

vs.

Edmund J. Olsen,
Defendant-Appellant.

(Filed March 9, 1976)

ORDER

On authority of *Agana Bay Development Co. (Hong Kong) Ltd. v. Supreme Court of Guam, No. 75-1059* (9th Cir., Jan. 14, 1976),

IT IS ORDERED that this Appeal be and the same hereby is dismissed for lack of jurisdiction.

Dated at Agana, Guam this 9th day of March, 1976.

/s/ CRISTOBAL C. DUENAS
CRISTOBAL C. DUENAS, JUDGE
DISTRICT COURT OF GUAM

HISTORY

Memorandum For:

The Chairman, Marianas Political Status Commission

The President's Personal Representative for Micronesian Status Negotiations

Subject:

Report of the Joint Drafting Committee on the Negotiating History

Pursuant to decisions taken in December during the fifth series of negotiations in Saipan on the future political status of the Marianas, the joint Marianas-United States Drafting Committee has met and has undertaken to record the intention of the parties regarding certain provisions of the Covenant. We submit our report herewith.

The results of our discussions are reflected in the attached draft negotiating history which is recommended by the Joint Drafting Committee for your consideration. The draft serves to set out our tentative agreement on a number of substantive matters. We recommend that it be approved by both delegations and incorporated into the official record.

/s/ HOWARD P. WILLENS
COUNSEL
MARIANAS POLITICAL
STATUS COMMISSION

/s/ JAMES M. WILSON, JR.
UNITED STATES
DEPUTY REPRESENTATIVE

Approved by the delegation of the Northern Mariana Islands and the United States on Feb. fifteenth, 1975.

/s/ EDWARD DLG. PANGELINAN
EDWARD DLG. PANGELINAN
CHAIRMAN
MARIANAS POLITICAL STATUS COMMISSION

/s/ F. HAYDN WILLIAMS
AMBASSADOR F. HAYDN WILLIAMS
THE PRESIDENT'S PERSONAL REPRESENTATIVE
FOR MICRONESIAN STATUS NEGOTIATIONS.

[page 3]

Section 401. **The establishment of a district court for the Northern Mariana Islands does not preclude the appointment of the District Judge, United States Attorney and United States Marshal for Guam to hold the corresponding offices in the Northern Mariana Islands at the same time. The United States Congress, in its discretion, may also provide that the United States Attorney and the United States Marshal for the Northern Mariana Islands are authorized and required to perform, at the request of the Government of the Northern Mariana Islands, certain functions related to the execution of the local laws.**

Subsection 402(c). **It is the intention of the parties with respect to this Subsection that the Legislature of the Northern Mariana Islands be under no obligation to grant any appellate jurisdiction to the District Court for the Northern Mariana Islands. The Legislature may choose at any time and from time to time to establish appellate courts of the Northern Mariana Islands and to eliminate or reinstate the appellate jurisdiction of the District Court.**

Subsection 501(a). **. . . .**

PERTINENT PARTS OF PUBLIC LAW 12-85
GUAM'S "COURT REORGANIZATION ACT"

Be It Enacted by the People of the Territory of Guam:

Section 1. This Act may be cited as the "Court Reorganization Act".

Section 2. Section 51 of Chapter I, Title I, Part I of the Code of Civil Procedure is hereby repealed and a new Section 51 is enacted in lieu thereof to read as follows:

"Section 51. Courts of justice in general. The Courts of justice of the territory of Guam consist of the Supreme Court and the Superior Court. The Judicial Council shall by rules of Court create such divisions of the Superior Court as within its judgment may be desirable and may designate which of such divisions shall be courts of record and which shall be courts not of record, provided however, that two (2) of such divisions shall be the Juvenile Court Division, a court of record, and the Traffic Court Division, a court not of record."

Section 3. Chapter II of Title I, Part I of the Code of Civil Procedure is hereby repealed and a new Chapter II is enacted in lieu thereof to read as follows:

"Chapter II

Supreme Court

Section 61. Composition of court. The Supreme Court shall be presided over by the Chief Justice of Guam and two (2) associate justices, all of whom shall be appointed by the *Legislature* for a term of eight (8) years each, unless sooner

removed for cause. The *Legislature* shall appoint each justice from among judges of the District Court of Guam, the Superior Court judges and three (3) additional persons who are admitted to the Guam Bar and who have practiced law in Guam for at least six (6) months who shall be nominated and whose names shall be submitted to the Legislature by the Judicial Council. . . .

(b) Disqualification or inability of the Chief Justice to act. In cases in which the Chief Justice is disqualified or unable to act, he shall designate any associate justice to sit in his place.

(c) The concurrence of two (2) justices shall be necessary to any decision of the Supreme Court on the merits of an appeal, but the Chief Justice alone, or an associate justice sitting in his place alone, may take any appropriate orders with respect to an appeal and dismiss an appeal for want of jurisdiction, or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

Section 62. Jurisdiction. The Supreme Court shall have jurisdiction of appeals from the judgments, orders, and decrees of the Superior Court in criminal cases as provided in the Penal Code, Part II, Title VIII, and in civil cases . . . .

The Supreme Court shall also have power to issue writs of mandamus, certiorari, prohibition and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have the power to issue writs of habeas corpus upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court or before

the Superior Court or any division of the Superior Court or before any judge thereof.

Section 63. Powers on appeal. Upon appeal, the Supreme Court may affirm, modify, vacate, set aside or reverse the judgment, order or decree appealed from, and remand the cause and direct the entry of such appropriate judgment, order or decree as may be just under the circumstances, but the Supreme Court may not take new or additional evidence, consider the issues of fact de novo, or set aside findings of fact made by the Superior Court unless they are clearly erroneous, and due regard shall be given to the opportunity of the trial judge to judge the credibility of the witnesses.

Section 65. Pending appeals. All actions and proceedings arising under the laws of Guam pending in the Appellate Division of the District Court of Guam upon the effective date of this Act shall be prosecuted to final determination in that court as though this Act had not been passed. All appeals pending before the United States Court of Appeals for the Ninth Circuit shall remain in said court and the District Court of Guam shall retain jurisdiction to enter such orders, decrees and judgments and conduct any appropriate proceedings in accordance with the ultimate mandates issued on any such pending appeals.

Section 5. Section 82, Chapter III, Title I, Part I of the Code of Civil Procedure is hereby repealed and a new Section 82 is enacted in lieu thereof to read as follows:

Section 82. Original jurisdiction. The Superior Court shall have original jurisdiction in all cases

arising under the laws of Guam, civil or criminal, in law or equity, regardless of the amount in controversy, except for causes arising under the Constitution, treaties, laws of the United States and any matter involving the Guam Territorial Income Tax."

[The remainder of the Act, as it related to the Supreme Court amends various laws of Guam to refer to the Supreme Court of Guam as the appellate court, instead of the Appellate Division of the District Court, as had been the law prior to the enactment of this Act.]

[By Public Law 12-85, appointment of the judges of both the Superior and Supreme Courts vests in the Governor of Guam, by and with the advice and consent of the Legislature.]

PERTINENT PARTS OF PART I, TITLE I, GUAM'S CODE OF CIVIL PROCEDURE WHICH WERE REPEALED BY THE "COURT REORGANIZATION ACT"

"Chapter II

District Court

Sec. 62. Original Jurisdiction. Under 22(a) of the Organic Act of Guam [48 U.S.C. 1424] the District Court of Guam has the original jurisdiction of a district court of the United States and has original jurisdiction in all other cases in Guam except those over which original jurisdiction has been transferred to and vested in the Island Court by §82 of this Title. If it appears that an action or proceeding brought in

the District Court is actually within the jurisdiction of the Island Court, the District Court shall transfer it to the Island Court for hearing and determination.

Sec. 62a. In the absence of the Judge of the District Court of Guam or his inability to serve, the Island Court through its Chief Justice shall have original jurisdiction in pleas of guilty, defaults and matters preliminary to trial in all causes where original jurisdiction is given to the District Court except in causes arising under the laws of the United States.

Sec. 63. Appellate jurisdiction. The District Court of Guam shall have jurisdiction of appeals from the judgments, orders and decrees of the Island Court in criminal causes as provided in the Penal Code, Part II, Title VIII, and in civil causes . . .

Sec. 64. Powers on appeal. Upon appeal the District Court may affirm, modify, . . .

Sec. 65. Appellate Division. Appeals from the Island Court shall be heard and determined by an appellate division of the District Court consisting of three (3) judges, of whom two (2) shall constitute a quorum. The appellate division when requested by the moving party, shall also hear and determine motions for rehearing or a new trial made after final decision of the District Court in all cases tried originally in that court in which such final decision is not appealable to the United States Court of Appeals for the Ninth Circuit. The judge appointed by the President shall be the presiding judge of the appellate division and shall preside therein unless disqualified

or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges assigned to the court from time to time by the Chief Justice of the United States pursuant to §24(a) of the Organic Act of Guam [48 U.S.C.A. 1424b]. The concurrence of two judges of the appellate division shall be necessary to any decision by the District Court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

Sec. 68. The District Court of Guam may from time to time prescribe rules, consistent with law and with the rules adopted by the Supreme Court (of the U.S.) and by the Judicial Council, for the conduct of its business, and may issue writs of habeas corpus, certiorari or review, mandamus or mandate, prohibition and all other writs necessary or appropriate in aid of its original or appellate jurisdiction and agreeable to the usages and principles or law.

Sec. 69. Pending appeals. All records, books, papers, causes, appeals and proceedings lodged, deposited or pending in the former Court of Appeals are transferred to the District Court of Guam which shall have the same jurisdiction over them as if they had been in the first instance lodged, deposited, filed or commenced therein. [Enacted 1953].